

**31A-27a-704 Early access disbursements.**

- (1) As used in this section, "distributable assets" means general assets of the liquidation estate less:
- (a) amounts reserved, to the extent necessary and appropriate, for the entire Subsection 31A-27a-701(2)(a) expenses of the liquidation through and after the liquidation's closure; and
  - (b) to the extent necessary and appropriate, reserves for distributions on claims other than those of an affected guaranty association falling within the priority classes of claims established in Subsection 31A-27a-701(2)(c).
- (2)
- (a) An early access payment to an affected guaranty association shall be made:
    - (i) as soon as possible after the day on which a liquidation order is entered;
    - (ii) as frequently as possible after the first early access payment, but at least annually if there are distributable assets available to be distributed to the affected guaranty association; and
    - (iii) in an amount consistent with this section.
  - (b) An amount advanced to an affected guaranty association pursuant to this section shall be accounted for as an advance against distributions to be made under Section 31A-27a-703.
- (c)
- (i) Subject to Subsection (2)(c)(ii), if sufficient distributable assets are available, amounts advanced need not be limited to the claims and expenses paid to date by the affected guaranty association.
  - (ii) Notwithstanding Subsection (2)(c)(i), the liquidator may not distribute distributable assets to an affected guaranty association in excess of the anticipated entire claims of the affected guaranty association falling within the priority classes of claims established in Subsections 31A-27a-701(2)(b) and 31A-27a-701(2)(c).
- (3)
- (a) Within 180 days after the day on which an order of liquidation is entered by the receivership court, and at least annually after that date, the liquidator shall:
    - (i) apply to the receivership court for approval to make early access payments out of the general assets of the insurer to an affected guaranty association having an obligation arising in connection with the liquidation; or
    - (ii) report that the liquidator has determined that there are no distributable assets at that time based on financial reporting as required in Section 31A-27a-117.
  - (b) The liquidator may apply to the receivership court for approval to make early access payments more frequently than annually based on additional information or the recovery of material assets.
- (4) Within 60 days after the day on which the receivership court approves an application under Subsection (3), the liquidator shall make an early access payment to an affected guaranty association as indicated in the approved application.
- (5)
- (a) Notice of each application for early access payments, or of a report required pursuant to this section, shall be given in accordance with Section 31A-27a-107 to the affected guaranty associations.
  - (b) Notwithstanding Section 31A-27a-107, the liquidator shall provide the affected guaranty associations described in Subsection (5)(a) with at least 30 days actual notice of the filing of the application with a complete copy of the application before any action by the receivership court.
  - (c) An affected guaranty association may:

- (i) request additional information from the liquidator, who may not unreasonably deny the request; and
  - (ii) object as provided in Section 31A-27a-107 to:
    - (A) any part of each application; or
    - (B) any report filed by the liquidator pursuant to this section.
- (6) In each application regarding early access payments, the liquidator shall, based on the best information available to the liquidator at the time of the application, provide at a minimum:
  - (a) to the extent necessary and appropriate, the amount reserved for:
    - (i) the entire expenses of the liquidation through and after the liquidation's closure; and
    - (ii) distributions on claims falling within the priority classes of claims established in Subsections 31A-27a-701(2)(b) and (2)(c);
  - (b) the calculation of distributable assets;
  - (c) the amount and method of equitable allocation of early access payments to each affected guaranty association; and
  - (d) the most recent financial information filed with the receivership court by the liquidator.
- (7)
  - (a) Each affected guaranty association that receives a payment pursuant to this section agrees, upon depositing the payment in any account to its benefit, to return to the liquidator any amount of these payments that may be required to pay:
    - (i) a claim of a secured creditor; or
    - (ii) a claim falling within the priority classes of claims established in Subsection 31A-27a-701(2)(a), (2)(b), or (2)(c).
  - (b) A bond may not be required of an affected guaranty association.
- (8) Without the consent of an affected guaranty association or an order of the receivership court, the liquidator may not offset the amount to be disbursed to the affected guaranty association by the amount of any special deposit, any other statutory deposit, or any asset of the insolvent insurer held in that state unless the affected guaranty association actually receives the deposit or asset.

Enacted by Chapter 309, 2007 General Session